

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 400 OF 2003
WITH
CIVIL APPLICATION NO. 612 OF 2003

Vasant Shivaji Mirgane ..Appellant
Vs.
Kamal Digamber Chavan and ors. ..Respondents
Mrs. Anjali Helekar for appellant.
Mr. T.D. Deshmukh i/by Mr. A.A. Kumbhakoni for
respondent nos.1,2 and 3a.

CORAM: B.H. MARLAPALLE, J.

Date : April 16, 2007.

P.C.:

1. Heard Mrs. Helekar the learned counsel for the appellant-plaintiff and Mr. Kumbhakoni appears for the respondents-original defendants.

2. This second appeal arises from the decree passed by the learned Joint Civil Judge, Junior Division, Madha in Regular Civil Suit No. 79 of 1986 on 31/3/1999. The suit of the appellant-plaintiff was decreed by the learned trial court. The said decree was challenged by the defendants in Civil Appeal No.219 of 1999 which came to be allowed on 21/9/2002

by the I Ad-hoc Additional District Judge, Solapur by setting aside the judgment and decree passed by the trial court and dismissing the suit. Hence this second appeal by the original plaintiff.

3. The plaintiff Vasant Shivaji Mirgane had filed the suit for the recovery of possession of agricultural land in Gat Nos.28 and 29 as well as 1/3rd share in well water in the land in Gat No.29. He stated that he was the son of Shivaji Dharma Mirgane and defendant no.1 was his father's sister, whereas defendant no.3 was his father's mother. As per him the suit land was purchased by his father Shivaji Mirgane by a sale deed dated 23/11/1971 and the defendants were cultivating the same. However, his father expired on 3/9/1981 and on 13/12/1983 a bogus sale deed was executed by the defendant no.1 in favour of defendant no.2 in respect of the suit land and consequently the land was put in possession of the defendant no.2 illegally. The plaintiff, therefore, prayed for a decree for possession and mesne profits.

4. The defendant no.1 filed Written Statement at

Exh.22 and denied the claim made by the plaintiff in toto. She further went to state that the plaintiff was not the son of her brother Shivaji Dharma Mirgane. As per her the suit land was purchased by her from her brother Shivaji as per the sale deed dated 12/7/1965 and on 23/11/1971 she required some money and, therefore, she borrowed the same from her brother (Rs.1000/-) with interest at 2% per month. By way of security for this loan the sale deed was signed in respect of the suit land in favour of her brother, but all along she remained in possession of the suit land and subsequently she repaid the said amount to her brother with interest. Defendant No.2 also filed Written Statement at Exh.18 and he further stated that he had spent about Rs.10,000/- for the development of the land after he had purchased the same from defendant no.1 in the year 1983. Both the courts below held that the plaintiff was the son of Shivaji Dharma Mirgane. However, the trial court proceeded to hold that the plaintiff had established his title over the suit land and he was entitled for its possession. The defendants were, therefore, directed to hand over the vacant possession of the suit land i.e. Gat

Nos.28 and 29 of village Kevad, Taluka Madha, District Solpaur to the plaintiff after two months and further an inquiry was directed to be held under Order 20 Rule 12 (1)(c) of C.P.C. for determining the future mesne profit. This decree was challenged in Civil Appeal No.219 of 1999 and the appeal was allowed by the learned I Ad-hoc Additional District Judge, Solapur on 21/9/2002.

5. The Lower Appellate Court did not agree with the findings recorded by the trial court regarding the sale transaction dated 23/11/1971 purportedly in favour of the plaintiff's father. The trial court noted that the plaintiff in his plaint by deleting para 2 had clearly admitted that the suit land was sold by his father to defendant no.1 as per the registered sale deed dated 12/7/1965. Mutation Entry No.740 was certified in that regard in favour of the defendant no.1. So far as the next sale deed dated 23/11/1971 is concerned, it held that the same was by way of security for loan advanced by the plaintiff's father to defendant no.1 and on repayment of the said amount the said transaction did not remain in force.

On the basis of the same sale deed dated 23/11/1971 initially the name of the plaintiff's father was brought on record in the record of rights by mutation entry nos.243 and 272. However, on the representation made by the defendant no.1 on repayment of the amount an inquiry was held and the record shows that the same mutation entries were deleted and the ownership was shown in the exclusive name of defendant no.1. The Lower Appellate Court also held that the defendant no.1 was all along in possession of the suit land inspite of the sale deed dated 23/11/1971 and this was not much disputed by the plaintiff as well. The cause of action for the plaintiff to come to the court was the sale deed dated 13/12/1983 signed by the defendant no.1 in favour of defendant no.2. The Lower Appellate Court on the basis of the evidence placed before the trial court held that so long as the transaction dated 23/11/1971 did not remain in force and it was only a guarantee for the loan advanced by the plaintiff's late father, the defendant no.1 had the right and title to transfer/alienate the land in favour of defendant no.2 by the sale deed dated 13/12/1983. The learned counsel for the plaintiff submitted her oral

arguments that the sale deed dated 12/7/1965 was only a nominal sale deed and the suit land always remained in the ownership of plaintiff's late father. This submission cannot be accepted on account of the admissions given by the plaintiff himself regarding this sale deed and withdrawal of the contention in para 2 of the plaint. The Lower Appellate Court was, therefore, right in setting aside the decree passed by the trial court which decree was passed solely on the basis of the contentions that the plaintiff's late father continued to be the owner of the suit land all along and this finding was contrary to the admission of the plaintiff himself in respect of the transaction between his father and defendant no.1 on 12/7/1965. Hence, this second appeal does not involve any substantial question of law for the consideration of this court and, therefore, the same fails at the threshold.

6. The second appeal is hereby dismissed in limine.

7. Civil Application No. 612 of 2003 does not

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survive and the same shall stand disposed as such.
Ad-interim order stands vacated.

(B.H. Marlapalle, J.)